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In The Supreme Court of the United States

OCTOBER TERM, 1926

GEORGE M. NAPIER,
Attorney General of the
State of Georgia,
Appellant,
vs.
ATLANTA COAST LINE RAILROAD
COMPANY,
Appellee.

No. [redacted] 87

BRIEF AMICUS CURIAE.

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GEORGE M. NAPIER,
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ATLANTA COAST LINE RAILROAD
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No. 386.

BRIEF AMICUS CURIAE.

The question involved in the above entitled cause is one in which the people of this State are vitally interested. The legislature in its regular session of 1921, enacted Act Number 139, entitled:

> "An Act requiring railroad companies to equip locomotive engines with either cab curtains or vestibule cabs, providing a penalty for a violation of this act and making it the duty of the Michigan Public Utilities Commission to enforce its provisions."

The title and section 1 of the act were amended by Act Number 127 of the Public Acts of 1923.

Under this act the Public Utilities Commission of this State was empowered to require railroad companies to

equip their engines operated within the State with "suitable cab curtains, vestibule cabs, housing and other devices for the safety and health of locomotive engineer men not in conflict with the rulings of the Interstate Commerce Commission" during certain seasons of the year. By virtue of this statute, the Michigan Public Utilities Commission issued an order requiring the Chicago & Northwestern Railway Company to equip its locomotives with appliances as provided by the act above mentioned. The railroad company thereupon filed a bill in the Circuit Court for the County of Ingham to restrain the Commission from enforcing the order. The Circuit Court denied the prayer of the bill and the case was appealed to the Supreme Court of this State which sustained, by a divided court, the decision of the lower court on the ground that the State Legislature could enact legislation covering a field which had not already been covered by Congressional legislation. The case is reported as the Chicago & Northwestern Railway Company vs. Michigan Public Utilities Commission, 233 Mich. 676. The prevailing opinion covers the question so completely and contains such a full citation of authorities that we desire to direct the attention of this Court to that opinion rather than attempt to cover the same ground in this brief. It was the contention of the State in that case, and that contention would apply equally to the instant case, that

I.

In the absence of legislation by Congress, the States are not denied the exercise of their powers to regulate railroad equipment and operation within their territory.

This doctrine was thoroughly discussed and it seems definitely settled in the case of Atlanta Coast Line Rail-

road Company vs. Georgia, 234 U. S. 280, 34 Sup. Ct. Rep. 829. The question was again before this Court in the case of the Vandalia Railroad Company vs. Public Service Commission of Indiana, 242 U. S. 255, 37 Sup. Ct. Rep. 93. Justice Hughes gave a very complete history of the Federal legislation in the Georgia case up to the time of that decision on page 832 to which the attention of this Court is directed for a history of legislation covering the question under consideration.

II.

There is no Federal regulation either by act of Congress or by any order of the Interstate Commerce Commission covering the subject matter under consideration in the instant case.

It will be noted from a reading of these decisions and also from a review of the legislation cited in the Supreme Court decisions of this State, reported in 233 Michigan, 676, that neither Congress nor the Interstate Commerce Commission, acting under its authority, has established any regulation over the subject matter involved in the instant case so far as we have been able to ascertain, after a careful inspection of the Federal statutes and the regulations of the Interstate Commerce Commission.

III.

State legislation incidentally affecting interstate commerce is not superseded by Federal legislation on the same subject matter unless there is an actual repugnancy between the State regulation and the Federal regulation and the purpose of Congress clearly appears to super-

sede the State regulation in pursuance of its paramount power.

It will be noted from what has already been said and from the authorities and acts of Congress cited and referred to in the Supreme Court decisions of this State hereinbefore mentioned, that there is no act of Congress or regulation of the Interstate Commerce Commission directly affecting the question involved in the case now under consideration and even should it incidentally affect an act of Congress or a regulation of the Interstate Commerce Commission that fact alone would not render legislation of that kind invalid. In this connection we call the Court's attention to the case of Missouri, Kansas & Texas Railroad Company vs. S. O. Harris, 234 U. S. 412, 34 Sup. Ct. Rep. 790, in which Mr. Justice Pitney, speaking for the Court, very clearly and fully discussed this proposition on page 793 and in this connection we would also call the Court's attention to the following cases:

Savage vs. Jones, 225 U. S. 501, 32 Sup. Ct. Rep. 715;
Missouri K. & T. Co. v. Haber, 169 U. S. 613, 18 Sup. Ct. Rep. 488;
N. Y., N. H. & H. Railroad vs. New York, 165 U. S. 628, 17 Sup. Ct. Rep. 418;
Telegraph Company vs. James, 162 U. S. 650, 16 Sup. Ct. Rep., 934;
Smith vs. Alabama, 124 U. S. 465, 8 Sup. Ct. Rep., 564;
Reid vs. People of State of Colorado, 187 U. S. 137; 23 Sup. Ct. Rep., 92.

It is our conclusion, therefore, that in the absence of legislation by Congress, the States may regulate railroad equipment and operation within their territory and that there is no Federal regulation or rule of the Interstate

Commerce Commission regulating the subject matter of the legislation by the State of Georgia under consideration, but even if Congress has enacted legislation covering a certain field the States are not prohibited from enacting legislation on the same subject matter which only incidentally affects interstate commerce.

It is the contention, therefore, that the Court below in the instant case was in error in holding that the act of the legislature of the State of Georgia was unconstitutional and invalid and in issuing an injunction restraining the appellant from enforcing said act and that such decree should be reversed.

Respectfully submitted,

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